



DEPARTMENT OF LABOR

Wage and Hour Division

Minimum Wage for Federal Contracts Covered by Executive Order 13658, Notice of Rate Change in Effect as of January 1, 2022

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), beginning January 1, 2022. Beginning on that date, the Executive Order 13658 minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to \$11.25 per hour, while the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to \$7.90 per hour. Covered contracts that are entered into on or after January 30, 2022, or that are renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, will be generally subject to a higher \$15.00 minimum wage rate established by Executive Order 14026 of April 27, 2021, Increasing the Minimum Wage for Federal Contractors.

DATES: These new Executive Order 13658 rates shall take effect on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693-0023 (not

a toll-free number). TTY/TTD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

Executive Order 13658 was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection with covered federal contracts to \$10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter in an amount determined by the Secretary pursuant to the Order. *See* 79 FR 9851. The Executive Order directed the Secretary to issue regulations to implement the Order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a Final Rule on October 7, 2014 to implement the Executive Order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Order.

Executive Order 13658 and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016. *See* 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the Order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b)(2), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- Not less than the amount in effect on the date of such determination;
- Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and
- Rounded to the nearest multiple of \$0.05.

Section 2(b) of Executive Order 13658 further provides that, in calculating the annual percentage increase in the CPI-W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI-W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI-W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 79 FR 9851. To calculate the annual percentage increase in the CPI-W, the Department elected in its Final Rule implementing the Executive Order to compare such CPI-W for the most recent year available with the CPI-W for the preceding year. *See* 29 CFR 10.5(b)(2)(iii). In its Final Rule, the Department explained that it decided to compare the CPI-W for the most recent year available (instead of using the most recent month or quarter, as allowed by the Order) with the CPI-W for the preceding year, “to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate.” 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate, Executive Order 13658 and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage takes effect. *See* 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department’s Wage and Hour Division (the Administrator) will publish an annual notice in the Federal Register stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. *See* 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), <http://www.wdol.gov>, or any successor site;¹ on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.*, and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.*; and by other means the Administrator deems appropriate. *See* 29 CFR 10.12(c)(2)(ii)-(iv).

¹ WDOL.gov moved to <https://alpha.sam.gov/content/wage-determinations>. This website is the authoritative and single location for obtaining appropriate Service Contract Act and Davis-Bacon Act wage determinations for each official contract action.

Section 3 of Executive Order 13658 requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least \$4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. *See* 79 FR 9851-52; 29 CFR 10.28(a). The Order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by \$0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. *Id.* For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest \$0.05. *Id.* When a contractor is using a tip credit to meet a portion of its wage obligations under the Executive Order, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. *Id.*

The Executive Order 13658 minimum wage and the cash wage required for tipped employees are currently \$10.95 and \$7.65 per hour, respectively. The Department announced these rates on August 31, 2020, 85 FR 53850, and the rates took effect on January 1, 2021.

II. Effect of Executive Order 14026

On April 27, 2021, President Joseph R. Biden, Jr. signed Executive Order 14026, Increasing the Minimum Wage for Federal Contractors. 86 FR 22835. Beginning January 30, 2022, Executive Order 14026 establishes a \$15.00 hourly minimum wage for the same types of contracts with the Federal Government that are covered by Executive Order 13658. However, Executive Order 14026 only applies to contracts with the Federal Government that are entered into on or after January 30, 2022, or that are renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For some amount of time, the Department therefore anticipates that there will be some existing contracts with the Federal Government that

do not qualify as a covered “new contract” for purposes of Executive Order 14026 and thus will remain subject to the minimum wage requirements of Executive Order 13658.

The Department anticipates that, in the relatively near future, essentially all covered contracts with the Federal Government will qualify as “new” contracts under Executive Order 14026 and be subject to its higher minimum wage rate. Until such time, however, Executive Order 13658 and its regulations at 29 CFR part 10 must remain in place. The Department will continue announcing annual updates to Executive Order 13658’s minimum wage rates for existing contracts still covered by Executive Order 13658.

III. The 2022 Executive Order 13658 Minimum Wage Rate

Using the methodology set forth in Executive Order 13658 and summarized above, the Department must first determine the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order 13658 minimum wage rate. In calculating the annual percentage increase in the CPI-W, the Department must compare the CPI-W for the most recent year available with the CPI-W for the preceding year. The Department therefore compares the percentage change in the CPI-W between the most recent year (*i.e.*, the most recent four quarters) and the prior year (*i.e.*, the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of \$0.05.

In order to determine the Executive Order 13658 minimum wage rate beginning January 1, 2022, the Department therefore calculated the CPI-W for the most recent year by averaging the CPI-W for the four most recent quarters, which consist of the first two quarters of 2021 and the last two quarters of 2020 (*i.e.*, July 2020 through June 2021). The Department then compared that data to the average CPI-W for the preceding year, which consists of the first two quarters of 2020 and the last two quarters of 2019 (*i.e.*, July 2019 through June 2020). Based on this methodology, the Department determined that the annual percentage increase in the CPI-W

(United States city average, all items, not seasonally adjusted) was 2.567 percent. The Department then applied that annual percentage increase of 2.567 percent to the current Executive Order hourly minimum wage rate of \$10.95, which resulted in a wage rate of \$11.231 $((\$10.95 \times 0.02567) + \$10.95)$; however, pursuant to the Executive Order, that rate must be rounded to the nearest multiple of \$0.05.

The new Executive Order 13658 minimum wage rate that must generally be paid to workers performing on or in connection with covered contracts beginning January 1, 2022 is therefore \$11.25 per hour.

IV. The 2022 Executive Order 13658 Minimum Cash Wage For Tipped Employees

As noted above, section 3 of Executive Order 13658 provides a methodology to determine the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Because the cash wage for tipped employees reached 70 percent of the Executive Order 13658 minimum wage beginning on January 1, 2018 (*i.e.*, \$7.25 per hour compared to \$10.35 per hour), future updates to the cash wage for tipped employees must continue to set the rate at 70 percent of the full Executive Order 13658 minimum wage. Seventy percent of the new Executive Order 13658 minimum wage rate of \$11.25 is \$7.875. Because the Executive Order provides that the rate must be rounded to the nearest \$0.05, the new minimum hourly cash wage for tipped workers performing on or in connection with covered contracts beginning January 1, 2022 is therefore \$7.90 per hour.

V. Appendix

The Appendix to this notice provides a comprehensive chart of the CPI-W data published by BLS that the Department used to calculate the new Executive Order 13658 minimum wage rate based on the methodology explained herein.

Dated: September 9, 2021.

Jessica Looman,

Acting Administrator,
Wage and Hour Division.

Appendix: Data Used to Determine Executive Order 13658 Minimum Wage Rate
Effective January 1, 2022.

Data Source: Consumer Price Index for Urban wage Earners and Clerical Workers (CPI-W)
(United States city average, all items, not seasonally adjusted)

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual Average
2019Q3 to 2020Q2	250.236	250.112	250.251	250.894	250.644	250.452	251.361	251.935	251.375	249.515	249.521	251.054	250.6125
2020Q3 to 2021Q2	252.636	253.597	254.004	254.076	253.826	254.081	255.296	256.843	258.935	261.237	263.612	266.412	257.0463
Annual Percentage Increase													2.567%

[FR Doc. 2021-19995 Filed: 9/15/2021 8:45 am; Publication Date: 9/16/2021]